with the union. It should instead, it contends, have been made secondarily responsible. The present order, it asserts, may well result in unjust enrichment of the union, and to permit the union thus to enrich itself can hardly be said to accomplish the purposes of the Act.

We are not unsympathetic with the company's position and certainly the Board could have provided secondary responsibility had it so chosen. The choice, however, remains that of the Board, and it is clear that the choice of joint and several liability is available to the Board when both the union and the employer had engaged in the discriminatory practice. *NLRB v. Newspaper and Mail Deliverers Union,* 192 F.2d 654 (2d Cir. 1951); *Union Starch and Refining Company v. NLRB,* 186 F.2d 1008 (7th Cir. 1951), *cert. denied,* 342 U.S. 815 (1951); also *cf., NLRB v. Pinkerton National Detective Agency,* 202 F.2d 230 (9th Cir. 1953). We would have a different case if the company had strongly resisted the imposition of this practice by the union. See *NLRB v. Lexington Elec. Products Co.,* 283 F.2d 54 (3d Cir. 1960).

The order is entitled to enforcement. So ordered.

United States Court of Appeals
for the Ninth Circuit

National Labor Relations Board, Petitioner, vs. Campbell Soup Company and Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Respondents.	No. 21,297

DECREE

Before: Merrill and Browning, Circuit Judges, and Taylor, District Judge:

This Cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it against the Respondent, Campbell Soup Company, Modesto, California, its officers, agents, successors and assigns and Respondent, Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, its officers, agents, and representatives on June 16, 1965. The Court heard argument of respective counsel on April 10, 1967, and has considered the briefs and transcript of record filed in this cause. On May 23, 1967, the Court being fully advised in the premises, handed down its decision granting enforce-

ment of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged And Decreed by the United States Court of Appeals for the Ninth Circuit that:

A. The Respondent, Campbell Soup Company, Modesto, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing support to Butchers Union Local No. 127, Amalgamated Meat Cutters and Butcher Workmen of North America (AFL-CIO), or any labor organization, by its practice of informing prospective and/or newly-hired employees of the requirement that employees must join the Union immediately, furnishing prospective employees with application for membership cards and initiation fees and dues checkoff authorizations, and deducting the said dues and initiation fees and paying the same over to the said Union, prior to the 30-day statutory grace period following employment.

(b) Requiring prospective or newly-hired employees to execute membership-dues-checkoff authorization cards for the aforementioned Union, or any other labor organization, prior to the expiration of the 30-day grace period provided for in Section 8(a)(3) of the National Labor Relations Act, as amended, (hereinafter called the Act).

(c) Checking off union dues for employees pursuant to membership-dues-checkoff authorzations unlawfully obtained from employees prior to the 30-day statutory period.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the aforesaid Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Union, reimburse all employees for moneys illegally exacted from them, in the manner and to the extent set forth in the section of the Board's Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to determine the amount of the moneys illegally exacted from the employees involved.

(c) Post at its plant in Modesto, California, copies of the attached notice marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for Region 20, (San Francisco, California) shall, after being duly signed by its authorized representative, be posted by the Respondent Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, and as soon as they are forwarded by the aforesaid Regional Director, copies of the Respondent Union's notice herein marked "Appendix B".

(e) Notify the said Regional Director, in writing, within 10 days from the date of this Decree, what steps the Respondent Company has taken to comply herewith.

B. The Respondent, Butchers Union Local No. 127, Amalgamated Meat Cutters and Butcher Workmen of North America (AFL-CIO), its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause the Respondent Company to discriminate against prospective and/or newly hired employees by requiring them to execute membership-dues-checkoff authorizations for

the above-named Union, or any other labor organization, prior to the expiration of the 30-day grace period provided for in Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Company, reimburse all employees for moneys illegally exacted from them, in the manner and to the extent set forth in the section of the Board's Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all membership, dues, and other records necessary to compute the moneys illegally exacted from the employees involved.

(c) Post at its business offices and meeting halls in Stockton, California, copies of the attached notice marked "Appendix B." Copies of said notice, to be furnished by the said Regional Director, shall, after being duly signed by the Union's representative, be posted by the Union immediately upon receipt

thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(d) Mail to the said Regional Director signed copies of Appendix B for posting by Respondent Company at its Modesto, California, plant, as provided above. Copies of said notice, to be furnished by the said Regional Director, shall, after being signed by Respondent Union's representative, be forthwith returned to the said Regional Director for disposition by him.

(e) Notify the said Regional Director, in writing, within 10 days from the date of this Decree, what steps it has taken to comply herewith.

Endorsed, Decree Filed and Entered

/s/ Wm. B. Luck
Wm. B. Luck
Clerk

[A True Copy
Attest:
Wm. B. Luck
Clerk]

Appendix B

NATIONAL LABOR RELATIONS ACT, AS AMENDED

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition

of employment to encourage or discourage membership in any labor organization: Provided, That nothing in his Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons

other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

Appendix C

ADMINISTRATIVE PROCEDURE ACT, TITLE 5, U.S.C.A.

Sec. 706:

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning of applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

Sec. 557(c)

"(a) . . .

(b) . . .

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof."

Appendix D

NATIONAL LABOR RELATIONS BOARD
STATEMENT OF PROCEDURE

Sec. 101.7. *Settlements.*—Before any complaint is issued or other formal action taken, the regional director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The regional office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the regional director, provide for an appeal to the general counsel, as described in section 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the regional director. Proof of compliance is obtained by the regional director before the case is closed. If the respondent fails to perform his obligations under the informal agreement, the regional director may determine to institute formal proceedings.

NATIONAL LABOR RELATIONS BOARD
RULES AND REGULATIONS

Sec. 102.45 *Trial examiner's decision; contents; service; transfer of case to the Board; contents of*

record in case.—(a) After hearing for the purpose of taking evidence upon a complaint, the trial examiner shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the act. The trial examiner shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the trial examiner's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, orders, the stenographic report of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the trial examiner's decision and exceptions, and any cross-exceptions or answering briefs as provided in section 102.46, shall constitute the record in the case.

Appendix E

(Letterhead of
National Labor Relations Board
Twentieth Region
830 Market Street, San Francisco 2, California)

August 23, 1963

Charles P. Scully, Esq.
Suite 1108-1120 David Hewes Bldg.
995 Market Street
San Francisco 3, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Sir:

In accordance with telephone conversations this date with the parties, I am enclosing copies of the proposed Settlement Agreement and Notice for your perusal and signature. I want to note that the proposed Settlement Agreement is based upon my opinion and is being recommended by me subject to the approval of the Regional Director.

The Charging Party, Mrs. Ritchey, worked more than 30 days (4-18 to 6-3-63) and therefore, in accordance with *Cadillac Wire Corp.*, et al. *128 NLRB 1002,* where there is a lawful union-security clause, would not be entitled to a refund of her initiation fee,

but is entitled to a refund of the amount of her first month's dues—$4.00—which was deducted on 5-5-63.

Although there is some evidence indicating that there may be other employees or former employees who might be entitled to participate in the remedy called for in this case, please note that the Settlement Agreement, as proposed, when agreed to contemplates extension of the remedy only to the Charging Party. Please sign and date the original and one copy and mail them to this office by *Tuesday, September 3, 1963.* A self-addressed, postage paid, envelope is enclosed for your convenience. Absent a Settlement Agreement in this case, I will recommend on *9-4-63* that a complaint issue.

Thank you for your cooperation. If you have any questions concerning this matter, please contact me immediately.

Very truly yours,
/s/ Dean H. Francis
Dean H. Francis
Field Examiner

Encl:
(Emphasis added).

August 26, 1963

Mr. Dean H. Francis
Field Examiner
National Labor Relations Board
830 Market Street
San Francisco 2, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Mr. Francis:

This will acknowledge your letter of August 23, 1963 and the enclosed Settlement Agreement with respect to the above matter.

In your letter you indicate the possibility of other employees being involved, but do not disclose their identity by name. As far as I am concerned, however, I believe this is immaterial because it is my understanding that upon the execution of this Settlement Agreement, there will be no claimed violation with respect to any employees employed up to the time of the execution of the settlement. If I am in error in this respect, I would appreciate being advised since, as you know, it is our position that the Union in no way caused or required the form to be signed by the employees and the form was presented to them by the employer but not as the agent of the Union.

I have forwarded the documents to my clients for their consideration and if satisfactory, I assume they

will sign and return them to me in the immediate future, at which time I will then forward them to you. *I do, however, have some concern with the third paragraph of the notice which would indicate an admission of illegal conduct in contradiction of the disclaimer in the Settlement Agreement itself. It would be my suggestion that you would consider the rewording of that, so as to remove any concept of admitted illegality.* In addition, it would appear that the reference to the 3-day in the last line of the first paragraph may be a typographical error also.

Very truly yours,
Charles P. Scully.

CPS:mb
OPE 3-AFL-CIO
cc: Messrs. Lautermilch, SF & Stockton
Osslo
(Emphasis added).

(Letterhead of
National Labor Relations Board
Twentieth Region
830 Market Street, San Francisco 2, California)

August 27, 1963

Charles P. Scully, Esq.
Suite 1108-1120 David Hewes Bldg.
995 Market Street
San Francisco 3, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Sir:

Enclosed you will find a copy of Form NLRB 4031 Notice to all Members. Please substitute this Notice for the one sent to you on August 23, 1963. You will note that the typographical error in the last line of the first paragraph referring to a "3-day" grace period is corrected to read "30-day." Thank you for your letter of August 26, 1963 noting the error.

In connection with the suggestion in your August 26, 1963 letter, concerning the possibility of rewording the last paragraph of the Notice to remove the inference of legality, I do not feel the Regional Director will object to dropping the word "illegal." *You will note, therefore, that the paragraph has been reworded and the offending word "illegal" deleted.*

Your understanding, as expressed in your letter of August 26, that upon the execution of this Settlement Agreement there will be no claimed violation with respect to any employees employed up to the time of the expiration of the settlement is correct.

Very truly yours,
Dean H. Francis /s/
Dean H. Francis
Field Examiner

Encl:
(Emphasis added).

August 28, 1963

Mr. R. Lautermilch, Secretary
Butchers Union Local No. 127
1024 Bank of America Bldg.
Stockton, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Mr. Lautermilch:

Enclosed you will find a revised NOTICE TO ALL MEMBERS which should be signed and returned to us, *since in view of the accompanying letter from Mr. Francis to me, a copy of which is enclosed, I believe you will see that it is a final and complete determination as to all pending disputes and simply involves the repayment of one month's dues.*

I suggest, however, that in the 5th line of the first paragraph, you insert a zero after the numeral "3" so that it appears "30 days" and initial that on the margin opposite the correction.

If you have any questions, please contact me.

Very truly yours,
Charles P. Scully.

CPS:mb
Enc.
OPE 3-AFL-CIO
cc: *Messrs. Dean Francis*
Max J. Osslo
SF Office
(Emphasis added)

August 28, 1963

Mr. Dean H. Francis
Field Examiner
National Labor Relations Board
Twentieth Region
830 Market Street
San Francisco 2, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Mr. Francis:

I am forwarding the signed Settlement Agreement and duplicate copy to you herewith, so that you may proceed, and you will note by attached copy of letter to Mr. Lautermilch that I have forwarded the amended Notice to him for execution.

Immediately upon the return of the signed Notice, it will be forwarded to you.

Very truly yours,
Charles P. Scully.

CPS:mb
Enc.
OPE 3-AFL-CIO
cc: Messrs. Lautermilch, SF & Stockton
Osslo

August 30, 1963

Mr. Dean H. Francis
National Labor Relations Board
830 Market Street
San Francisco 2, California

Re: Amalgamated Meat Cutters & Butcher Workmen of North America, Local 127
Case No. 20-CB-1116
(c Campbell Soup Company
20-CA-2780)

Dear Mr. Francis:

Enclosed you will find the executed copy of Notice in the above matter, which is being transmitted in accordance with the understanding contained in your letter of August 23, 1963.

You will note that we have made the corrections in the first paragraph and assume this is satisfactory.

If there is anything further to be done please advise.

Very truly yours,
Charles P. Scully.

CPS:mb
Enc.
OPE 3-AFL-CIO
cc: Messrs. Lautermilch, SF & Stockton
Osslo
(Emphasis added).

(Letterhead of
National Labor Relations Board
Twentieth Region
830 Market Street, San Francisco 2, California)

September 20, 1963

Mrs. Madeline Ritchey
1025 Conejo
Modesto, California

Campbell Soup Company
375 Memorial Avenue
Camden, New Jersey
Attn: D. H. Springer

Charles P. Scully, Esq.
Suite 1108-1120
David Hewes Building
995 Market
San Francisco 3, California
Attn: Victor Van Bourg, Esq.

Re: Campbell Soup Company
Case No. 20-CA-2780
Amalgamated Meat Cutters
and Butcher Workmen of
North America, Local 127
Case No. 20-CB-1116

Dear Madame and Gentlemen:

Additional matters relating to the above cases *have been brought to our attention.* The settlement proposal

previously submitted is withdrawn and further investigation will be made.

If you have any questions concerning this matter, please call or write.

Very truly yours,
Dean H. Francis /s/
Dean H. Francis
Field Examiner

(Emphasis added).

October 1, 1963

National Labor Relations Board
Twentieth Region
830 Market Street
San Francisco 2, California

Attention Mr. Dean H. Francis
Field Examiner

Re

Campbell Soup Company—No. 20-CA-2780—and
Amalgamated Meat Cutters and Butcher Workmen
of North America, Local 127—No. 20-CB-1116

Dear Mr. Francis:

This will acknowledge receipt of your letter dated September 26, 1963, enclosing a revised settlement agreement and notice.

As we have previously indicated to you in rather certain terms, we will not recommend such a settlement to our clients, and believe that any settlement should run only towards the charging party and towards no other person, particularly since we are dealing with the question of a subjective state of mind on the issue of voluntariness.

Accordingly, unless we can have a reconsideration of the original settlement agreement already agreed to by our principals, we can see no choice but to proceed with litigation in this case.

Very truly yours,
Charles P. Scully
By Victor Van Bourg

VVB:cb
OPE-3-afl-cio
cc: Messrs. Osslo
Lautermilch
(SF and Stockton)